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No. 84-734

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

HELEN SMITH,

Petitioner,

VS.

FRED H. HARMSEN, *et al.*,

Respondents.

Supplemental Brief in Support Of Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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In Helen Smith's Petition for a Writ of Certiorari, filed in this Court on November 6, 1984, it was stated that "[t]he Second Circuit has reserved the question" of whether the 1982 amendment to 28 U.S.C.§ 1961, governing interest on money judgments in federal courts, applies to a judgment entered prior to the effective date of the amendment. *Id.* at 12. That court has now answered the question with a resounding "No." *Litton Systems, Inc. v. AT&T,* No. 83-7744 (2d Cir. Oct. 16, 1984), 1984-2 Trade Cas. (CCH) ¶ 66,239.

The Second Circuit concluded that "amended section 1961 is not to be construed to apply to judgments entered before its effective date, even though on that date they were pending on direct review." 1984-2 Trade Cas. at p. 67,030 (footnote omitted). The court also rejected the alternative argument, adopted by the Ninth Circuit below, that the 1982

amendment should operate to increase the rate of interest on a pre-effective date judgment as of the effective date of the amendment (October 1, 1982) rather than as of the date of the judgment, but at the T-bill rate as it stood immediately prior to the date of the entry of the judgment. Rather, the court construed "amended section 1961 to have no application to judgments entered before October 1, 1982." *Id.* In so concluding, the Second Circuit observed:

> Litton contends that the rate should be the average coupon yield of Treasury bills auctioned just prior to June 30, 1981, the date the judgment [was] entered. *That makes no economic sense at all and could not have been intended by Congress.* Since Litton's judgment was properly accruing interest at 9% [the proper rate under New York law and the unamended version of § 1961] from the date of its entry until at least October 1, 1982, it would be an unwarranted windfall to have it accrue interest thereafter at a rate determined by market conditions 15 months earlier. On the other hand, if the rate accruing from the effective date of the statute was the average coupon yield of Treasury bills auctioned just prior to that effective date, the result would be economically defensible, but hopelessly inconsistent with the terms of the statute, which tie the applicable rate to the date of the judgment. We therefore reject Litton's fall-back position, but see *Handgards, Inc. v. Ethicon, Inc.*, 552 F. Supp. 820 (N.D. Cal. 1982), *aff'd*, ____ F.2d ____ (9th Cir. 1984).

Id. (emphasis added). In closing, the Second Circuit observed that

> there would not be unfairness in applying an increased rate only from the effective date of the new statute if it was reasonably clear to a judgment debtor that a new

> rate became applicable to the judgment at that date. But, as we have pointed out, that intermediate position is so plainly contrary to the statutory scheme that Congress selected in amending section 1961 that we cannot accept it, and it would be unjust to expect a judgment debtor to have so understood the statute.

Id. at p. 67,031.

The fact that the judgment at issue in *Litton* was entered on June 30, 1980, more than twenty-seven months prior to the effective date of the amendment, supports petitioner's argument that the question presented regarding retroactive application of the 1982 amendment to 28 U.S.C. § 1961 will continue to be litigated frequently, "as more judgments entered prior to the Act's effective date wend their way through the appellate process." Petition for Cert., at 13 (footnote omitted). Thus the question is more important, and arises much more frequently, than the typical "transition period" question. Not only is further expenditure of scarce judicial resources on this issue wasteful and unnecessary, but review and correction by this Court of the ruling below is necessary to effectuate Congress's express intent that money judgments in civil cases in the federal courts be subject to a *uniform* rate of interest. *See* S. Rep. No. 275, 97th Cong., 2d Sess. 1, 11, *reprinted in* 1982 U.S. Code Cong. & Ad. News 11, 21.

CONCLUSION

For the reasons set forth in her petition and in this supplemental brief, petitioner respectfully prays that a writ of certiorari issue to review and correct the rulings of the Ninth Circuit.

Respectfully submitted,

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